

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 GREAT-WEST LIFE & ANNUITY
11 INSURANCE COMPANY,

12 Plaintiff,

13 v.

14 RUTH WOLDEMICAEL, individually and
15 as Personal Representative of the Estate of
16 Ashley Ewen, MELISSA VIRTUE, and
17 VALLEY BANK OF PUYALLUP,

18 Defendants.

CASE NO. C05-01174JLR

ORDER

19 **I. INTRODUCTION**

20 This matter comes before the court on a Fed. R. Civ. P. 12(b)(2) (“Rule 12(b)(2)”) motion from Defendant Melissa Virtue (Dkt. # 15) to dismiss claims against her for lack of personal jurisdiction. The court has considered the parties’ briefing and accompanying declarations. For the reasons stated below, the court GRANTS the motion to dismiss.

25 **II. BACKGROUND**

26 Great-West Life & Annuity Insurance Company (“Great-West”), a Colorado
27 corporation, provides the group life insurance plan for the American Dental Association
28

1 (“ADA”), which has headquarters in Illinois. Ashley Ewen, a Washington resident and
2 member of the ADA, applied for a \$100,000 life insurance policy under the plan on July
3 19, 2002. Great-West issued coverage to Mr. Ewen, effective October 10, 2002. Mr.
4 Ewen applied for increased coverage on October 23, 2002, and received a \$1,000,000
5 policy, effective February 4, 2003. Sometime thereafter, Mr. Ewen failed to pay the
6 policy premium and his coverage lapsed on July 1, 2003. Mr. Ewen then submitted a
7 reinstatement request dated October 1, 2003, and Great-West restored Ewen’s coverage,
8 relating back to the date of lapse. Mr. Ewen died on December 18, 2004.

10 The three Defendants, Ruth Woldemicael, Melissa Virtue, and Valley Bank of
11 Puyallup, are named beneficiaries or collateral assignees to the proceeds of the insurance
12 coverage. After Mr. Ewen’s death, at least one of the Defendants filed a claim for the
13 proceeds, prompting an investigation into Mr. Ewen’s health history. From this
14 investigation, Great-West determined that Mr. Ewen misrepresented his good health in
15 his initial applications for coverage and in his request for reinstatement, and that he failed
16 to disclose information regarding his treatment and hospitalization for bipolar condition.
17 Consequently, Great-West denied the claim and rescinded the coverage on the basis of
18 fraud and misrepresentation. On June 17, 2005, Great-West notified all three Defendants
19 by mail and refunded Mr. Ewen’s premium payments to Ms. Woldemicael, the personal
20 representative of his estate.

22 While Defendants Woldemicael and Valley Bank are Washington domiciliaries for
23 purposes of jurisdictional analysis, Defendant Virtue is domiciled in Hawaii. The only
24 connection on record between Ms. Virtue and Washington State is her status as sister of
25 the decedent and beneficiary of the policy in question. The insurance contract contains a
26 choice of law provision selecting Illinois law.

1 On June 29, 2005, Great-West filed this action under 28 U.S.C. § 2201 and Fed.
2 R. Civ. P. 57 for a declaratory judgment that the rescission of life insurance coverage was
3 proper, that the policy was null and void from its inception, and that no Defendant was
4 entitled to benefits under the coverage. On October 3, 2005, this court denied Defendant
5 Woldemicael's motion to dismiss for failure to state a claim under Rule 12(b)(6). On
6 January 18, 2006, defendant Virtue filed the present motion to dismiss for lack of
7 personal jurisdiction under Rule 12(b)(2).
8

9 III. ANALYSIS

10 When a defendant moves to dismiss a complaint for lack of personal jurisdiction
11 and the court holds no evidentiary hearing, the plaintiff must make a prima facie showing
12 of personal jurisdiction to survive the motion. Harris Rutsky & Co. Ins. Servs., Inc. v.
13 Bell & Clements Ltd., 328 F.3d 1122, 1128-29 (9th Cir. 2003). The plaintiff must
14 provide evidence that, if believed, would support the court's exercise of jurisdiction over
15 the defendant. Id. at 1129. The court need not accept the plaintiff's bare allegations if
16 the defendant controverts them with evidence. See AT&T Co. v. Compagnie Bruxelles
17 Lambert, 94 F.3d 586, 588 (9th Cir. 1996). If both parties provide evidence supporting
18 different versions of a fact, however, the court must resolve competing inferences in the
19 plaintiff's favor. Harris Rutsky, 328 F.3d at 1129.
20

21 Where no federal statute governs personal jurisdiction, the district court must
22 apply the long-arm statute of the state in which the court sits. Fed. R. Civ. P. 4(k)(1)(A);
23 Core-Vent Corp. v. Nobel Indus. AB, 11 F.3d 1482, 1484 (9th Cir. 1993). Washington
24 and federal courts have established that the Washington long-arm statute reaches the full
25 extent of the due process clause of the United States Constitution. Easter v. American
26
27
28

1 West Financial, 381 F.3d 928, 960 (9th Cir. 2004); Werner v. Werner, 526 P.2d 370, 374
2 (Wash. 1974).

3 **A. Long-Arm Jurisdiction**

4 Despite the expansive reach of the Washington long-arm statute, Great-West has
5 not shown that the statute reaches Ms. Virtue in this case. Great-West argues that
6 jurisdiction is proper based on the clause providing for specific jurisdiction “as to any
7 cause of action arising from” the use, ownership, or possession of any property, whether
8 real or personal, situated in the state. RCW § 4.28.185(1)(c). Property ownership for
9 purposes of assessing personal jurisdiction is a matter of state law. See Rush v. Savchuk,
10 444 U.S. 320, 328 n.14 (1980). While Great-West cited to restatement principles by
11 which to determine the situs of the insurance policy, Great-West has not demonstrated
12 that the Defendant’s beneficial interest in the insurance policy constitutes ownership of
13 property in Washington, particularly in light of Great-West’s prior rescission of the
14 insurance contract before instituting this action. The court need not decide whether Ms.
15 Virtue’s interest is Washington property. As Great-West concedes, all assertions of
16 jurisdiction must comport with the federal due process clause. Shaffer v. Heitner, 433
17 U.S. 186, 209 (1977). Even assuming that Ms. Virtue’s interest in the proceeds of the life
18 insurance policy is Washington property, that ownership interest is an insufficient basis
19 for personal jurisdiction under Shaffer.
20
21

22 **B. Due Process and Purposeful Availment**

23 Due process requires that, in order for a state court to assume jurisdiction over a
24 party, the party must have minimum contacts with the state such that jurisdiction “does
25 not offend traditional notions of fair play and substantial justice.” Int’l Shoe Co. v.
26 Washington, 326 U.S. 310, 316 (1945). The Ninth Circuit analyzes specific jurisdiction
27 according to a three-prong due process test. Yahoo Inc. v. La Ligue Contre Le Racisme
28

1 Et L'Antisemitisme, 433 F.3d 1199, 1205-06 (9th Cir. 2006). First, the non-resident
2 defendant must purposefully direct activity or consummate some transaction with the
3 forum or a resident thereof, or perform an act by which she purposefully avails herself of
4 the privilege of conducting activities in the forum, thereby invoking the benefits and
5 protections of its laws. Id. Second, the claim must be one that arises out of or relates to
6 the defendant's forum-related activities. Id. Third, the exercise of jurisdiction must be
7 reasonable. Id.; see also Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802
8 (9th Cir.2004); Metropolitan Life Ins. Co. v. Neaves, 912 F.2d 1062, 1065 (9th Cir.
9 1990).

11 The first prong of the test may be satisfied by purposeful availment of the privilege
12 of doing business in the forum, by purposeful direction of activities at the forum, or by
13 some combination thereof. Yahoo, 433 F.3d at 1206. However, only the acts of the non-
14 resident defendant, not the unilateral act of a third person, can determine whether the
15 defendant has sufficient contacts to warrant jurisdiction. Helicopteros Nacionales de
16 Colombia, S.A. v. Hall, 466 U.S. 408, 416-17 (1984). This is so, even if the unilateral act
17 is done with the defendant's passive knowledge or acquiescence. See Kulko v. California
18 Superior Court, 436 U.S. 84, 93-94 (1978) (finding insufficient contact for custody
19 adjudication in defendant-father's consent to allow child to live in California part time).
20 Only after the record reveals some purposeful act directed at the forum, however small,
21 may the court begin to consider whether "considerations of reasonableness" dictate that
22 jurisdiction is proper. See Haisten v. Grass Valley Medical Reimbursement Fund, Ltd.,
23 784 F.2d 1392, 1397 (9th Cir. 1986).

26 The ownership of property within the forum is one contact, possibly suggestive of
27 other ties to the forum or the litigation, by which the court can evaluate the
28 reasonableness of asserting jurisdiction over a party. See Shaffer, 433 U.S. at 207-208.

1 The Shaffer Court explained that, “when claims to the property itself are the source of the
2 underlying controversy between the plaintiff and the defendant, it would be unusual for
3 the State where the property is located not to have jurisdiction.” 433 U.S. at 207. In such
4 cases, the Court noted, “the defendant’s claim to property located in the State would
5 normally indicate that he expected to benefit from the State’s protection of his interest.”
6 Id. at 207-208.

7
8 As noted, the court is not convinced that Ms. Virtue has an ownership interest of
9 the type contemplated by either Shaffer or state law. Assuming she does, however, and
10 assuming the situs of that property is Washington, Ms. Virtue could not reasonably have
11 expected a great deal of protection from Washington law. Through no act of her own,
12 and conceivably without her knowledge, she held an interest in a contract governed by
13 Illinois law, pursuant to the blanket terms of a group plan negotiated between a Colorado
14 corporation and an Illinois organization.¹ At best, the only protection Washington could
15 afford her would be a convenient forum in which she would have jurisdiction, should she
16 choose to bring this suit herself.

17
18 Great-West has not met its burden to show jurisdiction over Ms. Virtue because
19 nothing in the record indicates that she purposefully availed herself of her status as
20 beneficiary of the life insurance policy or took advantage of that status in any way. The
21 first indication that Ms. Virtue even knew of her status is the letter from Great-West
22

23
24 ¹Although the court is unaware of authority squarely addressing jurisdiction over a non-
25 resident insurance beneficiary, other courts have held that a passive beneficial interest does not
26 satisfy the purposeful availment requirement. See Paccar Int’l, Inc. v. Commercial Bank of
27 Kuwait, S.A.K., 757 F.2d 1058, 1063 (9th Cir. 1985) (finding insufficient availment in status as
28 beneficiary to line of credit from in-state branch of an interstate bank); Mueller v. Mueller, No.
02-C-488, 2002 U.S. Dist. LEXIS 3457, at *9-10 (N.D. Ill. March 4, 2002) (denying
jurisdiction over non-resident beneficiary to life insurance policy).

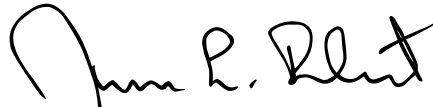
1 announcing its rescission of the contract. The record supports no inference of purposeful
2 availment.

3 The court understands Great-West's desire to resolve this dispute in a single
4 forum. The court also recognizes that the parties, witnesses, and evidence are located
5 primarily in Washington, making it arguably the most convenient forum for the
6 Washington litigants.² However, where Ms. Virtue has not committed a single act to
7 avail herself of the protection of Washington law, either within the state or from afar, the
8 court has no basis to assert personal jurisdiction. Hanson, 357 U.S. at 254.
9

10 IV. CONCLUSION

11 For the reasons stated above, the court GRANTS Ms. Virtue's motion (Dkt. # 15).
12 The clerk shall dismiss Ms. Virtue from this action.

13 Dated this 2nd day of March, 2006.

14
15 

16 JAMES L. ROBART
17 United States District Judge
18
19
20
21
22
23
24
25

26
27 ² Great-West suggests that the court must dismiss this action under Fed. R. Civ. P. 19 if
28 Ms. Virtue does not disclaim her interest in the policy and she cannot be joined as a party. This
assertion is not currently before the court.